

THE *Dan Smoot Report*



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DAN SMOOT

PARTICIPATORY DEMOCRACY

On March 11, 1969, the Faculty Council of Ohio State University (Columbus) announced an "open housing" rule, prohibiting students (on pain of being suspended or put on probation) from living in discriminatory off-campus housing. *Discriminatory* means refusal (on the basis of race, religion, color, or national origin) to rent housing to *any* OSU student.

The rule created an Open Housing Panel as a "tribunal" to decide what off-campus housing is discriminatory. The panel will consist of six faculty members (selected by the Faculty Council) and five students. Its decisions to blacklist off-campus housing will be made on the basis of investigations conducted by designated student investigators.

The Faculty Council submitted its open-housing rule to the Board of Trustees for approval.

Negro militants, the pro-communist Students for a Democratic Society (SDS), and other leftwing radicals (supported by students who call themselves "moderates") demanded immediate approval. The trustees, uncertain about the legality of the open-housing rule, sent it to the Ohio attorney general for his official opinion.

It took the attorney general (Paul W. Brown) almost two months to make up his mind. Radical leftists, on and off campus, were so noisy and insistent in their demands for instant approval of the open-housing rule that tensions mounted and riotous conditions developed. SDS was rumored to be planning a major uprising at Ohio State if the trustees did not approve the open-housing rule.

Ohio attorney general Brown gave his opinion on May 2, 1969: the OSU Board of Trustees had "the requisite authority" to adopt the open-housing rule.

On May 8, OSU trustees met to make up their minds. About 200 leftwing militants (and a considerable number of their "moderate" followers) gathered outside the meeting place to exert pressure for approval. They shouted threats and obscenities, and one 19-year-old male student performed a nude

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rain dance. Members of Young Americans for Freedom (an organization of conservatively-oriented students) gathered to register opposition to the open-housing rule and to the leftwing demonstrators. A few fist fights occurred, and a full-scale riot seemed imminent.

The trustees yielded to the leftwing pressure and approved the Faculty Council's open-housing rule, without a dissenting vote.⁽¹⁾

Robert R. Soltis, a Cleveland attorney, has prepared and mailed to the Ohio attorney general, and to all members of the OSU Board of Trustees, a brief on the open-housing rule. Citing Ohio and U.S. statutes, and state and federal court decisions, Mr. Soltis shows that the OSU open-housing rule violates U.S. laws and Ohio laws as well as U.S. and state constitutions; that it is arbitrary, tyrannical, and ridiculous; that it violates not only the rights of OSU students, but also the rights of off-campus homeowners who have no connection with OSU; and that it will intensify rather than decrease ill will and racial tensions on the OSU campus and in the surrounding community.

OSU faculty members, administrative officials, and trustees, who have imposed the illegal and dictatorial open-housing rule on students, are themselves exempt from it. The president of OSU can continue living in his exclusive (and, of course, "segregated") mansion. Other administrative officials, faculty members, and trustees can continue enjoying the freedom to live where they please.

Before OSU trustees approved the open-housing rule, attorney Soltis, in an open letter to all of them, asked some cogent questions which the trustees never answered:

—Is it not insulting to Negroes as a racial group (as well as being constitutionally and legally repugnant) to *compel* whites (by force, threats, and economic pressure) to associate with Negroes?

—Advocates of compulsory "open housing" (and other forms of forced racial mixing) intemperately condemn as a "racist" everyone who opposes the use of force to make whites mingle

with Negroes; but are they not themselves guilty of what Bayard Rustin condemns as "reverse racism"? Rustin (a Negro civil-rights activist with a communist-front record) says "reverse racism" is a conviction that Negroes are inferior to whites and will, therefore, benefit from forced association with the "superior" white race.

—Academicians, who imposed the open-housing rule on OSU students, claim to be passionately devoted to what they call "participatory democracy"; but are they not actually holding themselves up as "elitists"? Elitists, according to Bayard Rustin, are people who "think they have the right to make decisions for thousands of people when no vote has been taken." The thousands of vitally affected OSU students (and off-campus homeowners) were given no voice (no "participatory" role at all) in making forced-housing decisions which do not apply to the "elitists" who made the decisions.

—By exempting themselves from rules imposed on students, has not the OSU official hierarchy given credence to violent student protestors who accuse the university "establishment" of hypocrisy because it does not practice what it preaches?

Concerning the OSU trustees' behavior in adopting the open-housing rule, in surrender to the demands of a mob of obscene and violent leftwing militants, attorney Soltis said (in a memorandum to the trustees):

Concerned Americans with an awareness and sense of history will see many parallels between an event which occurred on March 23, 1933, in Berlin, Germany, and an event which occurred on May 8, 1969, in Columbus, Ohio. To be sure there are differences, but in degree rather than in essence and kind.

While a mob of brown-shirted totalitarians were creating an aura of tension and fear by assembling outside, on March 23, 1933, the Reichstag passed an edict euphemistically called an "Enabling Act" for "Removing the Distress of People and Reich." By that Act, the Weimar Republic was killed.

While a totalitarian mob of about 200 left-wing militants were gathered outside the OSU administration building in Columbus on May 8, 1969, creating an aura of tension and fear, the Board of Trustees passed an edict euphemistically called the "Open Housing" rule. By that action, freedom of choice and the right of association were killed at OSU.

In both instances, reason and faith in democratic principles and processes gave way in the presence of the threat of force — only the language spoken and color of the uniform (except for one young man who was completely "out of uniform") were different.

How do I answer people who, knowing of my devotion to the Constitution, ask me what we can do to prevent our cherished rights from being taken away from us by those who use threats and force to get their own way? Perhaps there is a pervasive, inbred sense of freedom in the major portion of the American spirit which will eventually peacefully reject the current orgy of neofascism.

But remember Dryden's warning: "Beware the fury of a patient man." Will those whose rights are taken away at the behest of obscene-talking subversives and their dupes be patient and pursue peaceful resistance when they see threats and force getting results?

The following analysis of the Ohio State University open-housing rule is adapted from (or suggested by) attorney Soltis's brief:

The people vest judicial power in courts created by the Constitution and in courts created by law. Legislative bodies cannot legally confer judicial power upon a private citizen or upon a group of citizens dubbed, or calling themselves, a tribunal. The only tribunal upon which judicial power can be lawfully conferred is a *court* created by statute or by the Constitution. The OSU Board of Trustees, therefore, has arrogated to itself authority to do what the Ohio state legislature or even the Congress of the United States could not lawfully do: it has given an Open Housing Panel

(comprised of 11 OSU faculty members and students) judicial power over home-owning, tax-paying citizens of Ohio.

The Open Housing Panel will presume to conduct public hearings to determine whether private homeowners, landlords, or their agents, discriminated against OSU students because of race, religion, color, or national origin. No rules of evidence are prescribed. The homeowners can be found guilty and blacklisted, without even being represented at the hearing. Since the tribunal is not legally constituted, there is no way to appeal its decisions. The Open Housing Panel at Ohio State University is, in short, a kangaroo court.

All OSU students (excepting *only* those living with their parents) are bound by the open-housing rule and subject to the arbitrary authority of the kangaroo court created to enforce the rule.

Any OSU student living off campus with friends, guardians, godparents, stepparents, relatives other than parents, or his own spouse, can be forced to move if the Open Housing Panel blacklists his place of residence. This could impose a heavy financial burden on some students.

Suppose a white girl is living off campus in the home of an aunt who charges the girl only a fraction of the rent anyone else would be charged. The aunt has one other room for rent, but refuses to let a Negro girl student have it, in order to reserve it for a white girl who is the niece's closest friend. The Open Housing Panel could (and no doubt would) blacklist the aunt's home, and make the niece move. The niece would be forced to leave family and take up lodgings with strangers — lodgings which might not be nearly as desirable as those she left, but which would cost her a great deal more.

Suppose an Ohio State student marries a woman (not a student) and moves into an apartment she is already occupying. The woman manages the apartment building and, for her services, gets her own rent free. A Negro student tries to rent an apartment but is refused, not because he is a Negro but because he is a known trouble-maker. He alleges, however, that he was refused because

of his race. Student investigators (selected as such *because* they believe in forced housing) support the Negro's false allegation. The Open Housing Panel holds a hearing attended only by the complaining Negro, the student investigators, and witnesses (who consist of SDS revolutionaries and other violent radicals). The housing-panel tribunal blacklists the apartment house, and orders the newlywed white student to move. He then has three choices: leave the university, leave his wife, or force his wife to leave the apartment with him and take up quarters where he must pay rent and where his wife will have no gainful part-time employment.

It is pertinent to note that the OSU Faculty Council which proposed this open-housing rule, providing harsh discipline against students for choosing to live with their own friends and relatives, is the same Faculty Council which, not long ago, passed a resolution urging amnesty for OSU students who rioted and interfered with the rights of others. It is also pertinent to note that the Warren Court (in *United States vs. Robel*) held that a communist may not be excluded from a defense facility because he believes in communism or associates with others of like belief.

Is a white student preferring to live with white friends, or with his own wife, more reprehensible in the academicians' "participatory democracy" than a rioter or a communist?

Technically, the same kind of stupid injustice could be imposed on an Ohio State Negro student; but everyone knows it would not be. Remember the case at Northwestern University in 1968 (and many similar cases at other universities). Northwestern faculty members and administrators force "open housing" on Northwestern white students, and lobby for laws to enforce it on all residents of the surrounding community; but they granted Negro students' demands for segregated housing and other facilities. The Negroes enforced their demands by seizing Northwestern's administration building and holding it 36 hours. When surrendering to the demands, Northwestern officials praised the Negro militants for not destroying

property during the illegal occupation of the building.⁽²⁾

Ohio State academicians are obviously the same kind of totalitarian liberals as those at Northwestern. They are doubtless among the lobbyists for Ohio H.B. 432 (already passed by the House of Representatives and pending in the Senate), which will enable the state to fine or jail a citizen for insisting on his right to choose who lives in his own home.

Attorney Soltis says:

Since OSU adopted open housing, the situation in Ohio has deteriorated rapidly. A new forced-housing law (covering all housing — even a single sleeping room in a private home) has passed in the House of Representatives and is expected to pass handily in the Senate.

Most disturbing of all is the appalling apathy of the people, complacently playing golf, and, like lemmings, dashing into the water, oblivious to the death of their freedoms.

FOOTNOTES

(1) Cleveland, Ohio, *Plain Dealer*, May 9, 1969

(2) *Dan Smoot Report*, Aug. 5, 1968

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